

REMARKS

A. BACKGROUND

The present Amendment is in response to the Office Action mailed January 25, 2008. Claims 1, 2, 5-15, 16-20, 23, and 24 were pending. Claims 1, 2, 5-13, 16, 17, and 24 are amended. Claims 1, 2, 5-15, 16-20, 23, and 24 remain pending in view of the above amendments.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicants request that the Examiner carefully review any references discussed below to ensure that Applicants' understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

B. REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

The Office Action rejected claim 5 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants believe that claim 5, as amended, corrects the previously identified antecedent basis insufficiency.

C. PRIOR ART REJECTION

Rejection Under 35 U.S.C. §102(e)

The Office Action rejected claims 1-2, 5-14, 16-20, and 23-24 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,304,184 (*Hathaway*). Because *Hathaway* does not teach or suggest each and every element of the rejected claims, Applicants respectfully traverse this rejection in view of the following remarks.

Hathaway teaches an apparatus and method for positive closure of an internal tissue membrane opening (Title). The device of Hathaway includes needles that are advanced through the tissue membrane (See col. 5, ll. 59-60). "Accordingly, four lengths of suture, each doubled back, are simultaneously advanced through the tissue membrane from proximal side 43 to distal side 45" (Col. 5, line 68-col. 6, line 3)(emphasis added).

In direct contrast, independent claim 1 recites, in part, "advancing a needle from a distal side of the tissue wall to form a port within the tissue wall in proximity of said aperture; passing at least a portion of a suture from the distal side of the tissue wall proximally through the port in the tissue wall" (*emphasis added*). Independent claim 8 recites, in part, "advancing a plurality of needles from a distal side of the vessel wall through the vessel wall to form ports in the proximity of the aperture; passing at least a portion of a suture proximally through the ports in the vessel wall disposed on opposite sides of the aperture from the interior of the vessel from the distal side to the proximal side of the vessel wall" and independent claim 16 recites, in part, "positioning opposite ends of a length of suture within the vessel; puncturing holes through the vessel wall from a distal side of the vessel wall with a pair of needles; and pulling the opposite ends of the length of suture through the vessel wall, wherein each needle pulls an end of the length of suture in a proximal direction through the holes in the vessel wall" (*emphasis added*). Finally, independent claim 24 recites, in part, "advancing a suturing device having a distal end and a flexible sheath extending therefrom through the aperture in the tissue wall; passing at least one needle and at least one portion of a suture from the distal side of the tissue wall; and forming a loop with the remaining portion of the suture to secure the suture" (*emphasis added*). *Hathaway* neither teaches nor suggests the advancement of the needles through the tissue or vessel wall from the distal side. Since *Hathaway* does not teach the invention being claimed in independent claims 1, 8, 16, or 24 this application, Applicants respectfully request that the rejection under 35 U.S.C. § 102(e) be withdrawn.

D. CONCLUSION

In view of the foregoing, Applicants believe the claims as amended are in allowable form. In the event that the Examiner finds remaining impediment to a prompt allowance of this

Application No. 10/813,449
Amendment "A" dated May 27, 2008
Reply to Office Action mailed January 25, 2008

application that may be clarified through a telephone interview, or which may be overcome by an Examiner's Amendment, the Examiner is requested to contact the undersigned attorney.

Dated this 27th day of May, 2008.

Respectfully submitted,

/Fraser D. Roy, Reg.# 45666/

FRASER D. ROY
Registration No. 45,666
Attorney for Applicant
Customer No. 57360
Telephone No. 801.533.9800

1725432_2